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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,969	08/01/2001	Chantal Cayuela	33339/234602	5142

826 7590 05/07/2004

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EXAMINER

HINES, JANA A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/856,969

Applicant(s)

CAYUELA ET AL.

Examiner

Ja-Na Hines

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-6 and 10-12.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

NTA MINNIFIELD
PRIMARY EXAMINER

5/4/04

5/4/04

Continuation of 2. NOTE: The amendment will not be entered because it does not place the application in better form by reducing or simplifying the issues. The entry of the amendment would raise issues that require further consideration and/ or search. Moreover, the amendment does not completely overcome the scope of enablement rejection. The rejection was on the grounds that while being enabling for a method for in vitro regulation of the inflammatory response of enterocytes, said method comprising contacting said enterocytes with a composition containing as an active agent a lactic acid bacteria strain *L. casei* CNCM I-1518 in a dose dependent manner, being capable of decreasing the production of Nitric Oxide (NO) by cultures of enterocytes preactivated with Cytomix combination of pro-inflammatory cytokines and bacterial lipopolysaccharide (LPS) on colon carcinoma cell lines does not reasonably provide enablement for the claimed method. The after final amendment fails to address the in vitro and in vivo distinction either by amendment or by argument. Therefore applicants' failed to overcome the rejection despite applicants belief to the contrary, thus the rejection is maintained. It is also noted that the instant claims should be reviewed for subject verb agreement, see specifically the plural noun and singular verb.